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September 30, 2011

**MEMORANDUM**

**To:** Anthony Herman  
General Counsel

**AUDIT REFERRAL # 11-06**

**Through:** Alec Palmer  
Staff Director

**From:** Patricia Carmona  
Chief Compliance Officer

Debbie Chacona

Digitally signed by Debbie Chacona  
DN: cn=Debbie Chacona, o=CA, ou=CA, email=debbie.chacona@ca.gov

Thomas Hintermister  
Acting Assistant Staff Director  
Audit Division

Thomas Hintermister  
Deputy Assistant Staff Director for Public Financing  
Digitally signed by Thomas Hintermister  
DN: cn=Thomas Hintermister, o=CA, ou=CA, email=thomas.hintermister@ca.gov

Thomas Nurthen  
Audit Manager

Thomas J. Nurthen, Audit Manager  
Digitally signed by Thomas J. Nurthen  
DN: cn=Thomas J. Nurthen, o=CA, ou=CA, email=thomas.nurthen@ca.gov

**By:** Mary Moss  
Lead Auditor

Digitally signed by Mary E. Moss  
Date: 2011.09.30 09:34:38 -0600

**Subject:** United Association Political Education Committee (A09-27)-  
Referral Matter

On September 1, 2011 the Commission approved the final audit report on the United Association Political Education Committee (UAPEC). The final audit report includes the following matter that is referable:

**Finding 2 – Failure to Timely File Notices and Properly Disclose Independent Expenditures**

All work papers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Mary Moss or Thomas Nurthen at 694-1200.

**Attachment:** Finding 2 – Failure to Timely File Notices and Properly Disclose Independent Expenditures

**cc:** Lorenzo Holloway

## **Finding 2. Failure to Timely File Notices and Properly Disclose Independent Expenditures**

### **Summary**

UAPEC disclosed independent expenditures, totaling \$510,314, on Schedule E (Itemized Independent Expenditures). The independent expenditures were reported when paid, which in most cases was after the date of the election. UAPEC should have disclosed these independent expenditures as memo entries on Schedule E and a corresponding debt on Schedule D. Finally, UAPEC failed to timely file any corresponding 24 or 48-hour notices. UAPEC agreed with the Audit staff's conclusion and, as recommended, provided a written copy of its new procedures.

The Commission approved a finding that UAPEC was required to file 24 or 48-hour notices for independent expenditures based on the dissemination date rather than payment date, and that UAPEC failed to keep a record of the dissemination date for the materials that were the result of the independent expenditures. UAPEC may consider the date such materials are delivered to its headquarters as the dissemination date for the purpose of filing 24 or 48-hour notices.

### **Legal Standard**

**A. Definition of Independent Expenditures.** The term "independent expenditure" means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in coordination with any candidate or authorized committee or agent of a candidate. 11 CFR §100.16(a).

**B. Disclosure Requirements – General Guidelines.** An independent expenditure shall be reported on Schedule E if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as "memo" entries on Schedule E and as a reportable debt on Schedule D. Independent expenditures of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) on Schedule E. 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11.

**C. Last-Minute Independent Expenditure Reports (24-Hour Notices).** Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20<sup>th</sup> day but more than 24 hours before the day of an election must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour notice is required for each additional \$1,000 that aggregates. The 24-hour notice must be filed on a Schedule E. The date that a communication is publicly disseminated serves as the date that the Committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).

**D. Last-Minute Independent Expenditure Reports (48-Hour Notices).** Any independent expenditure aggregating \$10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 30th day before an election, must disclose this activity within 48 hours each time that the expenditures aggregate \$10,000 or more. The notices must be filed with the Commission within 48 hours after the expenditure is made. 11 CFR §§104.4(f) and 104.5(g)(1).

## **Facts and Analysis**

### **A. Facts**

Between August 27, 2008 and December 3, 2008, UAPEC made 8 disbursements totaling \$510,314 for the purchase of materials such as mini-billboards, yard signs, posters, shirts, hats, etc. These disbursements were itemized on Schedules E, in support of Barack Obama, filed with the report covering the period in which the payments were made. A majority of the independent expenditures were related to one payment, in the amount of \$324,209, that was paid after the 2008 General election.<sup>1</sup> UAPEC should have disclosed these independent expenditures as memo entries on Schedules E, filed with reports covering the dates when the materials were disseminated, and included a corresponding debt on Schedule D (Debts and Obligations).

Further, UAPEC did not timely file any 24 or 48-hour notices of its independent expenditures and did not maintain documentation of the dissemination date for any of the materials. However, the invoices were dated either October 31, 2008 or November 18, 2008. Therefore, it appears likely that the materials were disseminated within a notice period.

### **B. Interim Audit Report & Audit Division Recommendation**

This matter was discussed with the UAPEC representatives during the exit conference. In response, Counsel stated that as a result of the audit, UAPEC's staff now understands the reporting requirements for independent expenditures, including 24 and 48-hour notices, and, the need to document dissemination dates. However, they were unsure how the dissemination date would be determined since UAPEC generally distributes materials directly to local union members or ships the materials to local unions for distribution. Counsel suggested that in the future, UAPEC will change its method of recording, aggregating and filing the required notices based on the date that materials are first received at UAPEC headquarters. This date would be UAPEC's dissemination date for 24 and 48-notices.

The Audit staff recommended that UAPEC implement revised procedures in order to properly disclose independent expenditures on Schedule's E and/or D and to track aggregation and dissemination for both the 24 and 48-hour notice requirements.

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<sup>1</sup> UAPEC received a refund of \$30,710 relative to this payment.

**C. Committee Response to Interim Audit Report**

In response, UAPEC agreed with the Audit staff's conclusion and, as recommended, provided a written copy of its new independent expenditure tracking procedures.

**D. Draft Final Audit Report**

In the Draft Final Audit Report, the Audit staff acknowledged that UAPEC provided a copy of its new procedures for tracking independent expenditures.

**E. Committee Response to Draft Final Audit Report**

In response, UAPEC stated, that although it understood the 24-hour and 48-hour independent expenditure notice requirement, it did not believe that the Act or Regulations provided any guidance on where materials such as yard signs, door-hillbores, shirts, hats, etc., should be considered disseminated. Therefore, although it planned on implementing its new revised procedures, it requested a clarification concerning the precise date when the 24 and 48-hour notices should have been filed.

**Commission Conclusion**

On June 15, 2011, the Commission considered the Audit Division Recommendation Memorandum, in which the Audit Division recommended that the Commission adopt a finding that UAPEC was required to file 24 or 48-hour notices for independent expenditures based on the dissemination date rather than payment date, and that UAPEC failed to keep a record of the dissemination date for the materials that were the result of the independent expenditures. UAPEC may consider the date such materials are delivered to its headquarters as the dissemination date for the purpose of filing 24 or 48-hour notices.

The Commission approved the Audit staff's recommendation. The Commission intends to consider these issues with respect to independent expenditure reporting and make a public statement regarding these issues.

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